

*** NOT FOR PUBLICATION ***

NO. 26320

IN THE SUPREME COURT OF THE STATE OF HAWAII

HAWAII VENTURES, LLC,
Plaintiff/Counterclaim-Defendant/Appellee/
Appellant/Cross-Appellant/Cross-Appellee

vs.

OTAKA, INC. and YUKIO TAKAHASHI,
Defendants/Counterclaim-Plaintiffs/Cross-Claim
Defendants/Appellees/Cross-Appellants/Cross-Appellees

and

TAKAO BUILDING CO., LTD. (TAKAO), K.K. DAINI SEVEN (DAINI SEVEN),
HAWAIIAN WAIKIKI BEACH, INC.,
Defendants/Counterclaim-Plaintiffs/Appellees/Cross-
Appellants/Cross-Appellees

and

ALAKA'I MECHANICAL CORPORATION, and HEWLETT-PACKARD COMPANY,
Defendants/Appellees/Cross-Appellees

and

BUSINESS MANAGEMENT GROUP, INC.,
Defendant/Cross-Claim Plaintiff/Appellee/Cross-Appellee

and

BEACH SNACK EXPRESS, INC., dba HAMACHAYA JUBEI, and
HAWAII ENERGY MANAGEMENT CO., LLC
Defendants/Appellees/Cross-Appellees

and

ILWU LOCAL 142, AFL-CIO
Intervenor-Defendant/Appellee/Cross-Appellant/Cross-Appellee

and

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THEODORE H. SMYTH, AS TRUSTEE OF THE SMYTH FAMILY TRUSTS, and
KARL W. WILLIG
Intervenors-Defendants/Counterclaim-Plaintiffs/Appellants/
Cross-Appellees

and

ARGONAUT INSURANCE COMPANY,
Intervenor-Defendant/Appellee/Cross-Appellee

and

LEUCADIA NATIONAL CORPORATION,
Additional Counterclaim-Defendant/Appellee/Cross-Appellee

and

PATRICIA KIM PARK,
Receiver/Appellee/Cross-Appellee

and

WILLIAM D. UDANI, MYRNA F. COSTA, MARY ANN E. ACIO, JACINTA
AGONOY, ROSITA A. ANCHETA, ZOSIMO A. ARISTA, GARY C. M. AU,
TOMASA E. BALIJNASAY, ERNA M. BAQUIEL, NELIA C. BOLOSAN, CATHY B.
CABERTO, LYDIA CABICO, HALARIO G. CABILES, PERLITA N. CABUENA,
CONRADO A. CANDELARIO, ERLINDA C. CORRALES, PO WU CHAN, PATRICIA
M. CHING, WAYNE K. Y. CHUNG, ROSITA F. COLOMA, SINFOROSA S.
CORPUZ, DEBORAH J. DAVIS, BINATE DELLATAN, ANACLETA DOMINGO,
PRISCILLA DUNAWAY, DELPHINA J. FULLER, SEGIBERTO G. GONO, YUNG
HEE HAN, PATTI R. HONJIYO, JOHNNY Y. ILORETA, RICHARD D. JAEGER,
JOSEPH KAUNAMANO, JR., MAILE F. KALAPA, WILLEDA KEPA, ANNA KIM,
TINA M. KIM, ANDRES C. LACAR, LEONILA G. LAUER, ROSITA A. LAZO,
JR., KARL LINDO, KATHLEEN L. LUKA, KEUM JA LEE, NESTOR S.
MADAMBA, ANITA Z. MAGALLANES, GERTIE P. MAGAOAY, LADDAR C.
MALLARE, MAGDALENA S. MANDING, FLORENCIA C. MANERA, IGOA T.
MULLER, DAVID CHI KEUNG NG, MARCUS NGIRTURONG, CHAUNCEY C.
NICOLA, III, DAWSON B. VON OELHOFFEN, JERRY A. PABRO, EGMIDIA T.
PASCUA, LETICIA T. PAUSO, DOMINGA PERALTA, ANA T. QUIBEANTOS,
JUANITA RAMOS, ENCARNACION V. RIVERA, ROBERT ROWLAND, SCOTT S.
SATO, SILVERIANO SEBASTIAN, VAIMOANA T. SEVELO, MARY PAT SOLIVEN,
YUN HIE TANIGUCHI, SETAITA T. TAULANI, EMILIA B. TUPINIO,
ROSEMARIE A. UDANI, ANECITA F. UGALE, JUANITA G. UNGOS,
LONGOMAILEA VAIOLETI, JUDITH VERSOZA, CHUNG LEONG WONG, DOLORES
A. YOKOI, KENNETH K. YOSHIDA, NOBUKO YOSHIDA, and ANDY S. C.
YOUNG

Intervenors/Appellees/Appellants/Cross-Appellees

APPEALS FROM THE FIRST CIRCUIT COURT
(CIV. NO. 00-1-2427)

ORDER DISMISSING APPEAL AND CROSS-APPEALS

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Upon review of the record, it appears that we lack jurisdiction over the appeal and cross-appeals in this case because the Honorable Paul T. Murakami's December 17, 2003 "First Amended Final Judgment as to All Claims and All Parties" does not satisfy the requirements for an appealable final judgment under HRS § 641-1(a) (1993).

With respect to the requirement of a final judgment, order or decree pursuant to HRS § 641-1(a) (1993), "[t]his court has previously noted that foreclosure cases are bifurcated into two separately appealable parts: (1) the decree of foreclosure and the order of sale, if the order of sale is incorporated within the decree; and (2) all other orders." Beneficial Hawai'i, Inc. v. Casey, 98 Hawai'i 159, 165, 45 P.3d 359, 365 (2002) (citations and internal quotation marks omitted). Therefore, except as HRS § 667-51 (Supp. 2003) otherwise authorizes, "matters subsequent to the foreclosure decree, [i.e., in part-two of a foreclosure case,] such as the confirmation of sale or the issuance and enforcement of the writ of possession . . . would have to wait until entry of the circuit court's final order in the case." Id. (citation omitted). "[T]he last and final order . . . [in part-two of a foreclosure case] is usually the deficiency judgment." Security Pacific Mortgage Corporation v. Miller, 71 Haw. 65, 70, 783 P.2d 855, 858 (1989) (citation and internal quotation marks omitted); Hoge v. Kane, 4 Haw. App. 246, 247, 663 P.2d 645, 647 (1983) ("In foreclosure cases, which result in a deficiency, the last and final order . . . is usually the deficiency judgment.").

Unlike most foreclosure cases, however, this

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foreclosure case includes an unusually large number of parties, and some of the parties have asserted additional counterclaims and cross-claims for causes of action other than foreclosure. In order to implement the finality requirement under HRS § 641-1(a) (1993), Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP) requires the entry of a separate judgment. "An appeal may be taken from circuit court orders resolving claims against parties only after the orders have been reduced to a judgment and the judgment has been entered in favor of and against the appropriate parties pursuant to HRCP [Rule] 58[.]" Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994). Therefore, "an appeal from any judgment will be dismissed as premature if the judgment does not, on its face, either resolve all claims against all parties or contain the finding necessary for certification under HRCP [Rule] 54(b)." Id.

The December 17, 2003 amended judgment does not contain operative language that enters a deficiency judgment in favor of Plaintiff/Counterclaim-Defendant/Appellee/Cross-Appellant/Cross-Appellee Hawaii Ventures, LLC, and against the appropriate parties. Instead, the December 17, 2003 amended judgment merely refers to a May 14, 2003 deficiency judgment that we previously deemed unappealable. Furthermore, the December 17, 2003 amended judgment does not, on its face, either resolve all of the other remaining claims against all parties or contain the finding necessary for certification under HRCP Rule 54(b).

If we do not require a judgment that resolves on its face all of the issues in the case, the burden of searching the often voluminous circuit court record to verify assertions of jurisdiction is cast upon this court. Neither the parties nor counsel have a right to case upon this court the burden of searching a voluminous record for evidence of finality, . . . and we should not make such searches necessary by allowing the parties the option of waiving the requirements of

***** NOT FOR PUBLICATION *****

HRCF [Rule] 58.

Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i at 119, 869 P.2d at 1338 (citation omitted). Consequently,

if a judgment purports to be the final judgment in a case involving multiple claims or multiple partes, the judgment (a) must specifically identify the party or parties for and against whom the judgment is entered, and (b) must (i) identify the claims for which it is entered, and (ii) dismiss any claims not specifically identified[.]

Id. (emphases added). For example, although this case involves multiple claims and multiple parties, the December 17, 2003 amended judgment does not identify or dismiss all claims by and/or against Defendant/Appellee/Cross-Appellee Alaka'i Mechanical Corporation and Intervenor-Defendant/Counterclaim-Plaintiff/Appellant/Cross-Appellee Karl V. Willig.

The December 17, 2003 amended judgment also does not resolve Defendant/Cross-Claim Plaintiff/Appellee/Cross-Appellee Business Management Group, Inc.'s (Appellee Business Management Group), cross-claim against Defendants/Counterclaim-Plaintiffs/Cross-Claim Defendants/Appellees/Cross-Appellants/Cross-Appellees Otaka, Inc., and Yukio Takahashi. The December 17, 2003 amended judgment refers to an October 3, 2001 stipulation for the dismissal of Appellee Business Management Group's cross-claim against Defendants/Counterclaim-Plaintiffs/Cross-Claim Defendants/Appellees/Cross-Appellants/Cross-Appellees Otaka, Inc., and Yukio Takahashi pursuant to HRCF Rule 41(a)(1)(B) and HRCF Rule 41(c), but the record shows that the October 3, 2001 stipulation was not signed by all parties who had appeared in the action, as HRCF Rule 41(a)(1)(B) required. The October 3, 2001 stipulation included a blank space for the circuit court's signature, but the circuit court did not sign the October 3, 2001 stipulation as a dismissal order pursuant to HRCF Rule 41(a)(2). Therefore, Appellee Business Management Group's cross-claim

***** NOT FOR PUBLICATION *****

remains unresolved.

The December 17, 2003 amended judgment incorrectly declares that “[a]ll claims against all parties in this action have been resolved.” (Emphasis added). Even if this declaration were correct, we have previously explained that “[a] statement that declares ‘there are no other outstanding claims’ is not a judgment.” Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai‘i at 119-20 n.4, 869 P.2d at 1338-39 n.4. “If the circuit court intends that claims other than those listed in the judgment language should be dismissed,” then the circuit court should include operative language within the judgment that orders “all other claims, counterclaims, and cross-claims are dismissed.” Id. (internal quotation marks omitted) (emphasis added).

The December 17, 2003 amended judgment does not include operative language that resolves all of the remaining claims, and, thus, the December 17, 2003 amended judgment does not satisfy the HRCF Rule 58 separate judgment requirement under the holding in Jenkins v. Cades Schutte Fleming & Wright. Absent an appealable final judgment, the appeal and cross-appeals are premature. Accordingly,

IT IS HEREBY ORDERED that the appeal and cross-appeals are dismissed for lack of jurisdiction.

DATED: Honolulu, Hawai‘i, April 23, 2004.